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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/465,402	12/17/1999	SUBBARAO V. PONAKALA	2047.114	8828

7590 04/19/2004

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EXAMINER	
WONG, LESLIE A	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

A5

Office Action Summary	Application No.	Applicant(s)	
	09/465,402	PONAKALA ET AL.	
	Examiner	Art Unit	
	Leslie Wong	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 December 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nofre et al (5480668) for the reasons previously set forth in rejecting the claims.

Nofre et al disclose N-substituted derivatives of aspartame and that N-[N-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine 1-methyl ester is an extremely potent sweetening agent, where the agent may be used by itself or in combination with other sweetening agents (see entire patent, especially column 6, lines 16-26). Nofre et al also disclose that the agent may be used in a variety of products including chewing gum (see column 1, lines 10-14).

The claims differ as to the amounts employed and the specific use in chewing gums.

In the absence of a showing to the contrary, the amounts employed are seen to be no more that optimization which is well-within the skill of the art, see In re Boesch 205 USPQ 215.

The use of intense sweeteners in chewing gum products is notoriously well-known and the selection of chewing gum product is well-within the skill of the art and merely a matter of choice.

Once the art has recognized the use of N-[N-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine 1-methyl ester as a sweetening agent, then the use and manipulation of amounts for use in chewing gums would be no more than obvious and well-within the skill of the ordinary worker. The observation of still another beneficial result in an old process cannot form the basis of patentability, see In re Jones 1941 CD 686.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the sweeteners of Nofre et al in chewing gum products because it is well-known in the art that N-[N-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine 1-methyl ester is a powerful sweetening agent for use in foods and beverages.

Applicant's arguments filed December 5, 2003 have been fully considered but they are not persuasive.

Applicant argues that unexpected results have been provided.

The declaration under 37 CFR 1.132 filed November 8, 2002 is insufficient to overcome the rejection of claims 19-24 based upon Nofre et al as set forth in the last Office action for the following reasons.

1) The showing is not commensurate in scope with the claims. Applicant claims "an amount effective to sweeten" whereas the showing appears to be specific for 100 ppm neotame.

Applicant argues that 100 ppm is representative of an effective amount. Applicant discloses the effective amount on page 24 to be from about 10 ppm to about 1600 ppm. It is not seen that Applicant has provided unexpected results for this range.

2) It is not seen where Applicant actually shows "wherein between 6 and 20 minutes of chewing time, the average sweetness intensity loss rate is less than 0.3 intensity units per minute."

Mere reference to data without clear and concise analysis is insufficient to establish unexpected results.

3) The prior art is directed to neotame as is claimed. Applicant does not refer to the prior art. It is not seen where Applicant has established unexpected results for the claimed invention.

In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination of known components which produces expected results, see In re Kerkhoven 205 USPQ 1069 and In re Gershon 152 USPQ 602.

All of the claim limitations and arguments have been considered. None of them are seen as serving as basis for patentability.

No claim is allowed.

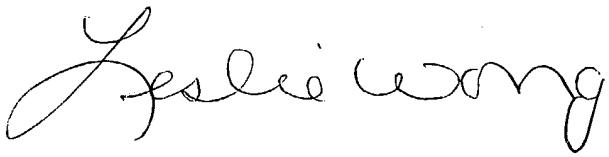
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leslie Wong
Primary Examiner
Art Unit 1761

LAW
April 16, 2004